IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1345 of 2005 with CWP No.1346 of 2005.

Reserved on: 21.05.2007.

Decided on: 18.07.2007.

CWP No.1345 of 2005.

Santosh Kumar … … … Petitioner.

Versus

State of H.P. and others. … … … Respondents.

CWP No.1346 of 2005.

Santosh Kumar … … … Petitioner.

Versus

State of H.P. and others.… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the petitioners: **Mr. Suneet Goel, Advocate.**

For Respondents No.1 to 4: **Mr. M.S. Chandel, Advocate General with Ms. Meenakshi Sharma, Deputy Advocate General.**

For Respondent No.5: **Mr. Anup Rattan, Advocate.**

For Respondents No.6 to 8: **Mr. Rajesh Mandhotra, Advocate.**

Rajiv Sharma, Judge:

These two writ petitions, involving common question of facts and law are taken up for hearing together and are being disposed by this common judgment.

Whether reporters of local papers may be allowed to see the judgment? Yes.

The brief facts which can be culled out from the pleadings of the parties in both the petitions are that the respondent No.7-Society had initiated selection process for filling-up the post of Secretary after the superannuation of the previous Secretary. Six candidates applied for the post of Secretary. The Selection Committee met on 20.4.2005. As per the averments contained in the petition, the name of the petitioner was recommended by the Selection Committee to the Managing Committee for appointment to the post of Secretary. The Managing Committee accepted the recommendations of the Selection Committee on 20.4.2005 vide Resolution No.47 (2). The respondents No.5 and 6 preferred a petition under Sections 72 and 73 of the H.P. Co-operative Societies Act, 1968 before the Additional Registrar, Dharamshala, who referred the matter to the Assistant Registrar, Co-operative Societies for settlement of disputes raised by them. The Assistant Registrar referred the matter to the respondent No.3. The respondent No.3 vide order dated 4th August, 2005 had set aside the appointment of the petitioner as Secretary.

Feeling aggrieved by the order dated 4.8.2005, the petitioner filed an appeal before the respondent No.2 and the same was dismissed by him on 28.11.2005.

Mr. Suneet Goel had strenuously argued that the recommendations of the Selection Committee were in accordance with law. Mr. Goel had further contended that once the matter has been referred by the Deputy Registrar to the Assistant Registrar, the Assistant Registrar could not further refer the matter to the

respondent No.3. Mr. Goel also contended that even if 10 marks are given to the candidate who was an ex-service man, even in that eventuality the petitioner had scored more marks than him. The learned Advocate General had supported the orders passed by the Arbitrator, i.e. respondent No.3 on 21.5.2005 as well as order dated 28.11.2005 passed by the Registrar of Co-operative Societies, Himachal Pradesh, i.e. respondent No.2. Mr. Anup Rattan appearing on behalf of respondent No.5 had adopted the arguments advanced by the learned Advocate General.

I have heard the parties and perused the entire record carefully.

Before the Court considers the rival contentions of the learned counsel appearing on behalf of the parties, it will be apt to refer to the relevant provisions of Himachal Pradesh Co-operative Societies Act. Section 73 of the Himachal Pradesh Co-operative Societies Act, 1968 (hereinafter referred to as the Act) is reproduced as under:-

> **"73. Reference of disputes to arbitration. – (1) The Registrar may, on receipt of the reference of a dispute under section 72, -**
>
> **(a) decide the dispute himself: or**
>
> **(b) transfer it for disposal to any person who has been invested by the State Government with powers in that behalf; or**
>
> **(c) refer it for disposal to an arbitrator.**
>
> **(2) The Registrar may withdraw any reference transferred under clause (b) of sub-**

section (1) or referred under clause (c) of that sub-section and decide it himself or refer the same to another arbitrator for decision.

(3) The Registrar or any other person to whom dispute is referred for decision under this section may, pending the decision of the dispute, make such interlocutory orders as he may deem necessary in the interest of justice.

(4) The Registrar or the arbitrator to whom the dispute is referred, after giving the parties a reasonable opportunity of being heard, shall give his decision or award as the case may be.

(5) Where the decision or award has been made in the absence of a party, the said, if aggrieved, may apply within one month of the date of such decision or award for an order to set aside such decision or award and if it satisfies the Registrar or the arbitrator that there was sufficient cause of its non-appearance when the matter was called on for hearing, the Registrar or arbitrator shall make an order setting aside his decision or award as the case may be.

Note

The provision is of a single arbitrator and a panel of arbitrators is not provided presumably to avoid delay in disposal of disputes referred for arbitration."

The State of Himachal Pradesh had framed the Rules called the **"H.P. Primary Agricultural Co-operative Credit Societies Employees (terms of employment & working conditions)**

Rules, 2001." Rules 8 and 9, which are relevant for the present case are reproduced as under:-

> **"8. <u>RECRUITMENT</u>**
>
> **(1) The appointments to the service shall be made by the managing committee on the recommendations of a Selection Committee.**
>
> **(2) No person shall be appointed to the service if he:**
>
> **(a) is not a citizen of India and is less than 18 years of age;**
>
> **(b) has been dismissed or removed from service of Government, Corporation, Board, Co-operative Society or any other body corporate on the grounds of misconduct or has been convicted by a Court of law for an offence involving moral turpitude;**
>
> **(c) is related to any committee member within the meaning of rule 20(xxvi) of the Rules; and**
>
> **(d) is an elected member of the committee of a society or a local body including a Panchayat.**
>
> **(3) No person shall be appointed in the service unless he produces a certificate from a Govt. Medical Officer about his physical and mental fitness.**
>
> **(4) No person shall be appointed in the service unless his antecedents have been certified to the satisfaction of the society.**

(5) An employee on his appointment shall have to furnish a statement of his wealth and that of his dependents and a statement of debt owned by him.

(6) The appointment shall initially be on probation for a period of two years. During the probation period an employee shall be eligible for the basic pay only and will become eligible for increments only after satisfactory completion of his probation subject to the provision of sub-rule (5). His regular appointment shall be considered on successful completion of probation period.

(7) The vacancies in the categories of Manager/Secretary and Assistant Secretary /Accountant/Clerk/Salesman/Cashier shall be filled up by promotion of employees from the immediately next lower categories. In case a suitable candidate as per required standard of educational qualification is not available for promotion, the management may decide to fill up the vacancies of these posts from open market.

(8) The maximum age of recruitment in a society shall be the same as may be specified by the State Govt. for its employees from time to time.

9. <u>SELECTION COMMITTEE</u>

(1) The following shall constitute the selection committee for the selection of employees:-

(a) Chairman of the society.

(b) Assistant Registrar, Co-operative Societies concerned or his nominee.

(c) One committee member duly authorized by the Managing Committee of the society.

(2) The marks allotted for qualification, experience, training and interview in respect of different categories of posts shall be as under:-

	Manager/ Secretary	Asstt. Secretary/ Clerk/Salesman/ Cashier	Peon/ Chowkidar
Qualification			
(a) Matric/Middle (in case of peon or Chowkidar) -	**-**	**3**	**3**
(b) M. examination -	**5**	**2**	**2**
(c) Graduate -	**2**	**2**	**2**
(d) Post graduate -	**3**	**3**	**3**
Experience One mark for one year of regular service in Govt./ Corporation/ Boards/ or any other body corporate	**10**	**10**	**10**
Training in Cooperation	**10**	**10**	**-**
Interview	**10**	**10**	**20**
Total	**40**	**40**	**40**

It is evident from Rule 9 that the following shall constitute the Selection Committee for the selection of employees:-

(a) Chairman of the society.

(b) Assistant Registrar, Co-operative Societies concerned or his nominee.

(c) One committee member duly authorized by the Managing Committee of the society.

The Assistant Registrar had appointed his nominee as per Rule 9. The selection Committee met on 20th April, 2005. Six candidates had appeared before the selection Committee. The petitioner had secured 24 marks. One Shri Subhash Chand, an ex-service man was allotted 12 marks. Under Rule 9 one mark for one year regular service in Government, Corporation, Boards, or any other body corporate is to be given to the candidate subject to a maximum of 10 marks. Shri Subhash Chand admittedly was an ex-service man and was entitled to 10 marks, but the Selection Committee has not allotted any marks to Shri Subhash Chand though entitled. The recommendations mark-sheet which is at page 58 of this paper-book reflects that only two members, i.e. Chairman and member of the Committee have signed the proceedings though an endorsement is made that the nominee of the Assistant Registrar was satisfied with the selection of Shri Santosh Kumar. The Selection Committee on the basis of the proceedings signed by only two members had recommended the case to the Managing Committee on 20.4.2005 and the Managing Committee had approved the recommendations made by the Selection Committee on 20th April, 2005 itself. As per Rule 44 of the H.P. Co-operative Societies Rules, 1971 notice of not less than three clear days is required for holding the meeting of the Managing Committee. The recommendations have been made by the Selection Committee on 20th April, 2005 and the Managing Committee in breach of Rule 44 of the H.P. Co-operative Societies Rules, 1971 met on the same day. The Arbitrator had come to the conclusion in its order dated 4th August, 2005 that there was no unanimity among the members of the Selection Committee, more particularly, with regard to the case concerning Shri Subhash Chand. The nominee of the Assistant Registrar according to

the order passed by the Arbitrator had not signed the proceedings and all the members of the Managing Committee were not informed of the meeting and only chosen few were associated in the selection process. The Arbitrator had set aside the appointment of the petitioner vide order date 4.8.2005.

In the appeal preferred by the petitioner against the order dated 4.8.2005, the main ground taken was that the Assistant Registrar, Hamirpur could not appoint respondent No.3 as Arbitrator. The relevant Section 73 has already been reproduced above. It is evident from the combined reading of Section 73 that the Registrar may on receipt of a reference of dispute decide the dispute himself or transfers it for disposal to any person who has been vested with powers in that behalf, or refer it for disposal to an Arbitrator. The Secretary (Coop.) had issued notification on 28th December, 1976 under Section 3(1) of the H.P. Co-operative Societies Act, 1968 appointing District Co-operative and Supplies Officers, Shimla, Mandi, Sirmour, Bilaspur, Kinnaur, Kullu, Kangra at Dharamshala, Hamirpur, Chamba, Solan, Una and the Sub-Divisional Officers (Civil), Lahaul & Spiti as Assistant Registrars to assist the Registrar, Co-operative Societies, Himachal Pradesh in administration of the said Act and conferred on these officers under Section 3(2) of the Act all powers of the Registrar exercisable by him under Section 7 including sections 72 and 73 of the H.P. Co-operative Societies Act, 1968 and Rule 4(2) of the Rules in Appendix 'A' of the Himachal Pradesh Co-operative Societies Rules, 1971. Similarly, the District Co-operative and Supplies Officers (Industrial), Education, Special, Audit, Development and Marketing posted at the headquarters Shimla and also the District Co-operative and Supplies Officers (Package) at headquarters Mandi and Kangra at Dharamshala and Assistant Project Officer (MFAL) at Solan as Assistant Registrar under

Section 3(1) of the H.P. Co-operative Societies Act, 1968 to assist the Registrar in administration of the Act and the powers were also conferred on them under Section 3(2) of the Act to exercise all the powers of the Registrar exercisable by him under Section 33, 61, 62, 64 to 67, 71 to 74, 86, 87 and 89 of the H.P. Co-operative Societies Act, 1968.

In the present case the Deputy Registrar, Co-operative Societies vide memorandum dated 17th May, 2005 on the petition filed under Sections 72 and 73 by respondents No.5 and 6 has directed that the Assistant Registrar, Co-operative Societies could him-self dispose of the petition or could appoint Arbitrator under Section 72(2) (c) of the H.P. Co-operative Societies Act, 1968. The Assistant Registrar, Co-operative Societies, Hamirpur was directed to dispose of the same without any delay. The Assistant Registrar vide office order dated 21.5.2005 in exercise of the powers vested in him under Section 73(1)(c) of the H. P. Co-operative Societies Act, 1968 appointed Shri Baldev Singh, District Inspector, Office of the Assistant Registrar, Co-operative Societies, Hamirpur as Arbitrator.

This Court is of the opinion that the Deputy Registrar, Co-operative Societies in his memorandum dated 17th May, 2005 had directed the Assistant Registrar, Co-operative Societies either to decide the reference him-self or appoint arbitrator under Section 72(2)(c) of the H.P. Co-operative Societies Act, 1968. The Assistant Registrar on the basis of memorandum dated 17th May, 2005 instead of deciding the dispute himself had appointed respondent Shri Baldev, District Inspector, Co-operative Societies as Arbitrator. The Arbitrator, i.e. respondent No.3 had passed the award on 4.8.2005. There is neither any irregularity nor any impropriety in the order of the Deputy Registrar directing the Assistant Registrar to decide the dispute himself or to

appoint the Arbitrator under Section 72(2)(c) of the H.P. Co-operative Societies Act, 1968. The Assistant Registrar had the jurisdiction to refer the matter to respondent No.3 on the basis of notification dated 28th December, 1976. The Assistant Registrar in sequel to memorandum dated 17th May, 2005 had appointed respondent No.3 as Arbitrator.

Once this Court has held that the appointment of respondent No.3 as Arbitrator was valid, now the question requiring consideration of this Court is whether the impugned orders are in conformity with law or not. The Arbitrator had come to the conclusion that no person was recommended for appointment by the Selection Committee to the post of Secretary as there was difference of opinion between the members of the Selection Committee in awarding marks to various candidates to have appeared in the interview. The Arbitrator had also adversely commented upon the convening of the meeting of the Managing Committee on the same date on which the recommendations were made by the Selection Committee. The Arbitrator had set aside the appointment of the petitioner on 4.8.2005.

The Registrar, Co-operative Societies after going through the order dated 4.8.2005 and perusing the record had come to the right conclusion that in the absence of participation of the nominee of the Assistant Registrar in the deprecations of the Selection Committee the two members of the Committee could not make the recommendations. The Registrar, Co-operative Societies had also given a finding that the meeting of the Managing Committee was convened on the same day and only selected members of the Committee were invited to approve the appointment of the petitioner. The Registrar had also noted cuttings/overwriting in the mark-sheet prepared by the two members. This Court has also taken note of the cuttings/overwriting in the mark-sheet and the fact that the nominee of the Assistant Registrar had not

signed the proceedings. The Registrar, Coop. had also noticed the illegality committed by the Society of approving the appointment of the petitioner without approval of the Assistant Registrar, Co-operative Societies as required under bye-law 15(9) of the Society read with Rule 56 of the H.P. Co-operative Society Rules, 1971. The order passed by Arbitrator on 4.8.2005 and order dated 28.11.2005 passed by the Assistant Registrar, Co-op. Societies cannot be faulted with. The respondent No.7 was required to seek approval of the Assistant Registrar, Co-operative Societies before issuing the appointment letter to the petitioner in terms of Rule 56(3) of the H.P. Co-operative Societies Rules, 1971.

There is neither any jurisdictional error nor procedural irregularity in the orders as aforesaid and the same are up-held.

The upshot of the above discussion is that (i) the nominee of the Assistant Registrar had not signed the proceedings dated 20th April, 2005, (ii) there are cuttings and overwriting in the mark-sheet which makes the entire selection process suspect in the eyes of law, (iii) Shri Subhash Chand was entitled to get 9 marks for his experience as per "H.P. Primary Agricultural Co-operative Credit Societies Employees (terms of employment & working conditions) Rules, 2001" , (iv) the order passed by the Deputy Registrar, Co-operative Societies on 17th May, 2005 are in accordance with law. The Assistant Registrar, Co-operative Societies could either decide the reference him-self as Arbitrator or appoint respondent No.3 as Arbitrator under Section 73(1)(c) of the H.P. Co-operative Societies Act, 1968. The orders passed by respondents No.2 and 3 are in accordance with law.

The Apex Court in ***Ludhiana Central Cooperative Bank Ltd. versus Amrik Singh and others, (2003) 10 SCC 136*** has held that the appointments made in the Ludhiana Central Cooperative Bank Ltd. were in gross violation of the binding circular orders of the Registrar of Cooperative Societies. The Apex Court had adversely commented upon the entire selection process initiated by the Ludhiana Central Cooperative Bank Ltd. and declared the same a farce of selection vitiated by award of indiscriminate marks to boost up the candidates of choice and unreasonably put down others in utter disregard and derogation of the binding guidelines. Their Lordships of the Hon'ble Supreme Court have held as under:-

> **"We have carefully considered the submissions on behalf of the parties on either side, in the light of the materials placed on record. The conclusion that the functioning of the then Managing Director of the appellant Bank is neither appreciable nor can the so-called selections be given any credence of real/proper selections or can be said to have been made in accordance with law, becomes irresistible. The whole process appears to have been not only perfunctory but really a farce of selection vitiated by award of indiscriminate marks to boost up the candidates of choice and unreasonably put down others in utter disregard and derogation of the binding guidelines. Indisputably, the power to appoint is vested in the Board of Directors of the appellant Bank under the bye-laws and the constitution of a committee for the selection of candidates by conducting tests and interviews cannot clothe the said Committee with**

powers also to finalise the same without the approval of the Board and/or either declare the results of selection on its own or appoint persons pursuant to such selections without reference to the Board. There is a serious claim by the appellant Bank, that the assessment of candidates appears to be in gross violation of the binding circular orders of the Registrar of Cooperative Societies dated 31.12.1991. The High Court while passing the order on 22-10-1997 allowing the writ petition, could not have ignored the directions of the Registrar on 9-1-1997 and 21-1-1997, the ban orders of the Government issued on 10-2-1997 an the final directions issued on 3-4-1997 by the Registrar as to what should be done in all pending as well as fresh matters to ensure transparency as well as to mete out real and effective justice to all the aspirants for the jobs in question, by finding a solution of its own without even looking into the records relating to the selection to satisfy itself as to the legality, propriety, regularity and reasonableness of the so-called selections and the process adopted by the Committed before directing action to be taken in implementation thereof. Even otherwise, it is well settled by now that a person whose name is said to find place in a select panel has no vested right to get appointed to the post in spite of vacancies existing. The appointing authority cannot afford to ignore individual claims at its whim or fancy, in operating such a panel or making appointments on the basis of the panel, by merely "pick and choose" of candidates. The High Court could not have directed the publication of results or to accord appointments as per such results, all the more in this case, in the teeth of and in derogation of the

circular orders of the Registrar of Cooperative Societies dated 3-4-1997 which decision seems to have been taken as a matter of policy and for uniform application to all cases pending finalisation as well as for any new proposals for recruitment of staff relating to all cooperative banks in the State. The High Court ought to have, at any rate, gone into all these relevant and vital aspects at least when serious irregularities have been brought to notice by filing a review petition, by calling for production of the relevant records. The cavalier fashion in which it seems to have been rejected cannot meet with our approval, at any rate on the peculiar facts and circumstances highlighted in this case."

Accordingly, these petitions are dismissed. The interim orders dated 22.12.2005 are vacated. The respondent No.7-Society is directed to initiate fresh selection process strictly in conformity with Rules 8 and 9 of "H.P. Primary Agricultural Co-operative Credit Societies Employees (terms of employment & working conditions) Rules, 2001" and to complete the same within a period of three months from today. In the mean-time the petitioner will be permitted to discharge his duties and his candidature will also be considered for the post of Secretary in accordance with law. There shall be no order as to costs.

(Rajiv Sharma)
Judge

July 18, 2007
(sck).